

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMILY PENZO,

Plaintiff,

-against-

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Defendant.

USDC SDNY
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DATE FILED: 12/11/2023

1:19-cv-07478-MKV

**ORDER MEMORIALIZING
RULINGS ON DEFENDANT'S
MOTIONS *IN LIMINE***

MARY KAY VYSKOCIL, United States District Judge:

On November 27 and November 30, 2023, the Court held pretrial conferences in this matter. At those conferences, the Court issued rulings from the bench on Defendant's motions *in limine*. [See ECF Nos. 112–116]. For the reasons stated on the record, IT IS HEREBY ORDERED as follows:

Defendant's motion *in limine* to exclude evidence regarding non-similarly situated comparators [ECF No. 112] is DENIED without prejudice to appropriate objections at trial. *See Graham v. Long Island R.R.*, 230 F.3d 34, 39 (2d Cir. 2000) ("Whether two employees are similarly situated ordinarily presents a question of fact for the jury.").

Defendant's motion *in limine* to exclude evidence regarding Plaintiff's time-barred claims and associated requested relief [ECF No. 113] is GRANTED IN PART and DENIED IN PART. Any acts that occurred prior to August 12, 2017 are time-barred with respect to Plaintiff's ADA claims. Any acts that occurred prior to June 8, 2015 are time-barred with respect to Plaintiff's NYSHRL and NYCHRL claims. Any acts that occurred prior to August 9, 2016 are time-barred with respect to Plaintiff's FMLA claims.

Defendant's motion *in limine* to exclude inadmissible hearsay [ECF No. 114] is DENIED for vagueness without prejudice to appropriate objections at trial.

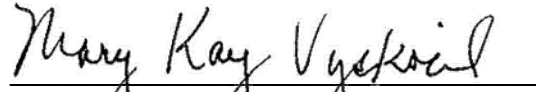
Defendant's motion *in limine* to exclude evidence regarding unpled discrimination or wage and hour claims [ECF No. 115] is GRANTED IN PART and DENIED IN PART. Plaintiff may not reference unpled national origin discrimination, race discrimination, gender discrimination, or New York Labor Law wage and hour claims. However, evidence regarding whether certain policies of Defendant, including compensation policies, were applied to Plaintiff in a discriminatory or retaliatory manner is relevant to and probative of Plaintiff's existing claims.

Defendant's motion *in limine* to exclude evidence regarding Plaintiff's back pay or front pay damages is GRANTED IN PART and DENIED IN PART. Any such award will be offset by the stipulated-to amount of long-term disability payments that Plaintiff received.

The Clerk of Court is respectfully requested to terminate the motions pending at docket entries 112, 113, 114, 115, and 116.

SO ORDERED.

Date: December 11, 2023
New York, NY



MARY KAY VYSKOCIL
United States District Judge